



HOUSING BOARD OF REVIEW

City of Burlington

149 Church Street Room 11

Burlington, Vermont 05401

(802) 865-7122

HOUSING BOARD OF REVIEW CITY OF BURLINGTON

NOTICE OF DECISION

Enclosed is a copy of the "Findings of Fact, Conclusions of Law and Order" of the Burlington Housing Board of Review.

Please note that a person aggrieved by a decision of the Housing Board of Review is entitled to appeal to the Chittenden Superior Court. (See Housing Code Section 18-59 and Vermont Statutes Annotated, Title 24, Section 5006.) The court rules may require that such an appeal be commenced within thirty (30) days of the Board's Order.

Unless an appeal is taken, the Board's Order should be complied with before expiration of the thirty (30) day period.

DATED 9/4/20

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Josh O'Hara
Josh O'Hara
Board Chair

cc: Nathaniel Schramm
Bruce & Susan Thibaud, c/o Neville Companies

**CITY OF BURLINGTON, VERMONT
HOUSING BOARD OF REVIEW**

In re: Request for Hearing of Nathaniel Schramm,)
Abigail Schramm and Rebecca Towle Regarding)
Withholding of Security Deposit by Bruce and) Security Deposit Appeal
Susan Thibaud for Rental Unit at 119 North)
Willard Street, #3)

DECISION AND ORDER

The above-named hearing came before the Housing Board of Review on August 3, 2020; the heard was held virtually via Zoom. Board Vice Chair Patrick Murphy presided. Board Members Josh O’Hara and Charlie Gliserman were also present. Petitioner Nathaniel Schramm was present and testified. Respondents Bruce and Susan Thibaud were represented at the hearing by Coty Fitzgerald and Jeffrey Raab who were present and testified. Also appearing and testifying as witnesses were Dave Schramm and Alice Goodridge-Schramm.

Upon consideration of the evidence and the applicable law, the Board makes the following Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

1. Respondents Bruce and Susan Thibaud are the owners of a rental unit, 119 North Willard Street, #3, in the City of Burlington which is the subject of these proceedings. Neville Companies manages the property.
2. Petitioners Nathaniel Schramm, Abigail Schramm and Rebecca Towle moved into the rental unit with a written lease which ran from June 1, 2019 to May 24, 2020. Monthly rent was \$1755.00.
3. Petitioners paid a security deposit of \$1755.00 to respondent. Petitioners were to receive back their security deposit at the end of the lease minus any amounts withheld for damages.

4. Petitioners vacated the apartment on May 24, 2020.

5. On June 3, 2020, Neville Companies sent an estimate of deductions from the deposit to petitioners in accordance with ordinance requirements; Neville Companies returned \$987.92 to them at that time. On June 18, 2020, Neville Companies sent a revised and final statement to petitioners and returned an additional \$291.64 to them. Neville Companies itemized 2 deductions from the deposit: \$182.69 to patch holes and \$293.67 to clean. Petitioners disputed the deduction for cleaning.

6. Interest in the amount of \$0.92 was credited to the deposit.

7. The deduction for cleaning amounted to 4.5 hours of labor at a rate of \$64/hour¹. The deduction also included a minimal amount for supplies, a service fee and travel charge. Neville Companies billed respondents for the work and respondents passed the charge onto petitioners even though Neville Companies indicated at the move-out inspection that everything was okay in the apartment. The invoice for cleaning noted that the burner was wiped down, the wall and window next to the stove was wiped down, and cobwebs in a bedroom and across from the kitchen were wiped down; the only supplies needed were cleaner and paper towels. Coty Fitzgerald testified that he believed there was an excessive amount of grease on the walls and stove that required cleaning. Petitioners testified they left the apartment much cleaner than when they moved into it. In addition, petitioners testified they thoroughly cleaned the entire kitchen before moving out. When questioned by the Board about the rate of charge for cleaning (which seemed unusually high) Coty Fitzgerald simply noted that's what the hourly rate is.

¹ The same hourly rate was charged for patching holes in walls.

Conclusions of Law

8. The City of Burlington's security deposit ordinance, Minimum Housing Code Sec. 18-120, took effect April 10, 1986 and governs any rental arrangements for dwelling units in the City of Burlington entered into or renewed after that date.

9. The State of Vermont's Landlord and Tenant Act, now codified at 9 V.S.A. Sec. 4451-68, applies to rental agreements for residential property entered into, extended or renewed on or after July 1, 1986. Its terms are to "be implied in all rental agreements" to which it is applicable. 9 V.S.A. Sec. 4453.

10. Under the city ordinance, as well as state law (the terms of which must be implied in the parties' rental agreement), a landlord must return the security deposit to a tenant within 14 days from the date on which the tenant vacated or abandoned the dwelling unit, with a written statement itemizing any deductions. City ordinance also provides that the written statement must inform the tenant of the opportunity to request a hearing before the Burlington Housing Board of Review within 30 days of receipt of the landlord's written statement. Minimum Housing Code Sec. 18-120(c). The statement and any payment must be hand-delivered or sent by mail. Minimum Housing Code Sec. 18-120(c). If a landlord fails to return the deposit with a statement within 14 days, the landlord forfeits the right to withhold any portion of the security deposit. See, Minimum Housing Code Sec. 18-120(c) and 9 V.S.A. Sec. 4461(e). Timely notice was provided.

11. Section 18-120(c) of the Minimum Housing Code permits a landlord to retain all or part of the security deposit for the actual cost to repair damage beyond normal wear and tear which is attributable to the tenant in order to maintain the condition and habitability of the unit, for nonpayment of rent, for nonpayment of utility or other charges the tenant was required to pay,

and for expenses required to remove from the rental unit articles abandoned by the tenant.

Section 18-2 defines normal wear and tear as

the deterioration which occurs, based upon the reasonable use for which the dwelling unit or rooming unit is intended, without negligence, carelessness, accident or abuse of the premises or supplied equipment or appliances by the occupant or members of his household or their invitees or guests.

In *Mongeon Bay Properties, LLC v. Mallets Bay Homeowner's Ass'n*, the Vermont Supreme Court elaborated on the contours of the normal-wear-and-tear concept. The Court explained that the analysis will examine: 1) whether the tenant made reasonable use of the property; 2) the type of property, as well as its context and use; and 3) whether the tenant took reasonable steps to avoid damage to the property. 2016 VT 64, ¶¶ 32-37, 202 Vt. 434, 149 A.3d 940.

12. Respondents deducted \$182.69 of the deposit for cleaning. Petitioners cleaned the apartment before moving out. The cleaning invoice indicates the cleaning done consisted of wiping down the stove, a wall and some cobwebs. Petitioners made reasonable use of the property and there is no evidence to suggest they abused it. Consequently, the Board concludes the cleaning done by respondents was attributable to normal wear and tear. Even if the Board had concluded otherwise, we conclude that the hourly rate of \$64/hour for cleaning was unreasonable. In the Board's experience, most cleaners seem to charge \$25-35/hour for cleaning.

Order

Accordingly, it is hereby ORDERED:

13. Petitioners Nathaniel Schramm, Abigail Schramm and Rebecca Towle are entitled to recover from respondent Bruce and Susan Thibaud the following amounts:

a) \$293.67 of the principal amount of the security deposit improperly withheld after June 7, 2020; and

b) Additional interest of \$0.002 per day from June 8, 2020 until such date as the amount improperly withheld is returned to petitioners.

DATED at Burlington, Vermont this 14th day of September, 2020.

CITY OF BURLINGTON
HOUSING BOARD OF REVIEW

/s/ Patrick Murphy
Patrick Murphy

/s/ Josh O'Hara
Josh O'Hara

/s/ Charlie Gliserman
Charlie Gliserman